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November 20, 2006

DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Case Name: Personnel Security Hearing

Date of Filing: June 16, 2006

Case Number: TSO-0400

This Decision concerns the eligibility of XXXXX XXXXXX XXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."^{1/} A Department of Energy (DOE) Operations Office suspended the individual's access authorization under the provisions of Part 710. This Decision considers whether, on the basis of the evidence and testimony presented in this proceeding, the individual's access authorization should be restored. As set forth in this Decision, I have determined that the individual's security clearance should be restored.

I. Background

The provisions of 10 C.F.R. Part 710 govern the eligibility of individuals who are employed by or are applicants for employment with DOE, contractors, agents, DOE access permittees, and other persons designated by the Secretary of Energy for access to classified matter or special nuclear material. Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a).

^{1/} An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to variously in this Decision as an access authorization or security clearance.

In this instance, the individual was granted a security clearance from DOE after gaining employment with a DOE contractor. However, the local DOE security office (DOE Security) initiated formal administrative review proceedings by informing the individual that his access authorization was being suspended pending the resolution of certain derogatory information that created substantial doubt regarding his continued eligibility. This derogatory information is described in a Notification Letter issued to the individual on April 17, 2006, and falls within the purview of potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections h and j. More specifically, the Notification Letter alleges that the individual has: 1) “[a]n illness or mental condition which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause a significant defect in judgment or reliability,” and 2) “[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse.” 10 C.F.R. §§ 710.8(h) and (j) (Criterion H and Criterion J, respectively). The bases for these findings are summarized below.

The Notification Letter states that the individual was evaluated by a DOE consultant-psychiatrist (DOE Psychiatrist) who diagnosed the individual with Alcohol Dependence with Physiological Dependence, in Early Full Remission. According to the DOE Psychiatrist’s report, this is a mental condition that causes or may cause a significant defect in the individual’s judgment or reliability. The DOE Psychiatrist further determined that the individual did not present adequate evidence of rehabilitation or reformation. In addition, the Notification Letter states that on March 23, 2005, the individual was arrested on a charge of Driving While Intoxicated (DWI).

In a letter received by the DOE Office of Hearings and Appeals (OHA) on June 16, 2006, the individual exercised his right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). On June 19, 2006, I was appointed as Hearing Officer in this case. After conferring with the individual and the appointed DOE Counsel, 10 C.F.R. § 710.24, a hearing date was established. At the hearing, the DOE Counsel called the DOE Psychiatrist as the sole witness on behalf of DOE Security. Apart from testifying on his own behalf, the individual called his plant psychologist, supervisor, counselor (Counselor), Alcoholics Anonymous (AA) sponsor, a co-worker and two close friends. The transcript taken at the hearing will be hereinafter cited as "Tr.". Documents submitted by the DOE Counsel and the individual during this proceeding constitute exhibits to the hearing transcript and will be cited as "DOE Exh." and "Ind. Exh." respectively.

Summary of Findings

The following factual summary is essentially uncontroverted. However, I will indicate instances in which there are disparate viewpoints regarding the information presented in the record.

The individual was granted a security clearance in 1980 as a condition of his employment. The individual held his security clearance without significant incident for 25 years, until March 23, 2005, when he was arrested on a charge of DWI. On September 20, 2005, DOE Security summoned the individual for a Personnel Security Interview (PSI) to discuss the circumstances of his DWI arrest. The information supplied by the individual during his PSI is summarized below.

The individual was a moderate drinker for much of his adult life, until approximately four to five years ago when he began stopping at a bar on a weekly basis for happy hour. The individual would admittedly consume six to seven beers over a two-hour period before driving home. The individual became friends with several of the customers who frequented the bar for happy hour, and gradually over the next few years it became the individual's pattern that he would stop at the bar for happy hour nearly every day. On March 23, 2005, the individual stopped at the bar and consumed six to seven beers before deciding to leave and drive home. The individual was admittedly intoxicated at the time since he had not eaten any lunch that day. The individual recounted that when entering the highway, he was suddenly cut off by another driver. The individual was angered and retaliated by aggressively cutting the driver off later down the highway. The individual's actions were reported to the police who caught up with him and asked the individual to submit to a Breathalyzer and field sobriety tests. The individual refused and was charged with DWI.

The individual's DWI arrest led him to accept that he had a drinking problem and he immediately began complete abstinence, and sought counseling with his Employee Assistance Program (EAP) counselor. The EAP counselor evaluated the individual on March 30, 2005, and determined that the individual should enter an alcohol treatment program. The EAP counselor referred the individual to a five-week Intensive Outpatient Program (IOP), which the individual began on April 18, 2005. The EAP counselor also recommended that the individual attend Alcoholics Anonymous (AA) and aftercare counseling following completion of the IOP.

Pursuant to the PSI, the individual was referred by DOE Security to the DOE Psychiatrist who examined the individual's personnel security file and conducted a psychiatric evaluation of the individual on January 6, 2006. In her report dated January 14, 2006, the DOE Psychiatrist diagnosed the individual with Alcohol Dependence, with Physiological Dependence, in Early Full Remission, based upon diagnostic criteria set forth in The Diagnostic and Statistical Manual of the American Psychiatric Association, IVth Edition TR (DSM-IV TR). According to the DOE Psychiatrist's report, this is a mental condition that causes, or may cause, a significant defect in judgment or reliability.

The DOE Psychiatrist further opined in her report that the individual was without adequate evidence of reformation or rehabilitation. In this regard, the DOE

Psychiatrist noted that the individual reportedly had been abstinent since his DWI arrest, had successfully completed the IOP and was continuing in the treatment plan outlined by his EAP counselor. The DOE Psychiatrist therefore recommended as adequate evidence of rehabilitation that the individual maintain abstinence and continue his treatment program for an additional six months. As adequate evidence of reformation, the DOE Psychiatrist recommended abstinence by the individual for two years beyond completion of the additional six months of treatment. In the alternative, if the individual chose not to continue in treatment, the DOE Psychiatrist recommended three years of absolute sobriety as adequate evidence of reformation.

II. Analysis

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not a criminal matter, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. See Personnel Security Hearing, Case No. VSO-0078, 25 DOE ¶ 82,802 (1996). In this type of case, we are dealing with a different standard designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once DOE Security has made a showing of derogatory information raising security concerns, the burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). This standard implies that there is a strong presumption against the granting or restoring of a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors. After due deliberation, it is my opinion that the individual's access authorization should be restored since I conclude that such restoration would not endanger the common defense and security and would be clearly consistent with

the national interest. 10 C.F.R. § 710.27(d). The specific findings that I make in support of this determination are discussed below.

A. Criteria H & J; Mental Condition, Use of Alcohol

The DOE Psychiatrist diagnosed the individual with Alcohol Dependence based upon diagnostic criteria set forth in the DSM-IV TR. DOE Exh. 10 at 14-15. The DSM-IV TR generally provides that a diagnosis of Alcohol Dependence is supported when the individual manifests three or more of the following behaviors occurring at any time within the same twelve-month period: 1) increased tolerance, 2) withdrawal, 3) alcohol often consumed in larger amounts or over a longer period than intended; 4) persistent desire or unsuccessful efforts to cut down, 5) great deal of time spent in activities to obtain alcohol; 6) important social, occupational, or recreational activities given up or reduced; and 7) continued use despite physical or psychological problem caused or exacerbated by alcohol. See *id.* at 13. In the case of the individual, the DOE Psychiatrist determined that the individual met the criteria 1, 3, 4 and 7^{2/} during the three-year period preceding his March 2005 DWI arrest. *Id.*

I find that the Alcohol Dependence diagnosis of the DOE Psychiatrist is supported by the record of this case. The individual openly admits that during the years prior to his arrest, his happy hour drinking to the point of intoxication became an almost daily occurrence. See Tr. at 90. The individual and his Counselor further agreed that the individual was properly diagnosed with Alcohol Dependence by the DOE Psychiatrist. Tr. at 100, 121.^{3/} I therefore find that DOE Security properly invoked Criteria H and J in suspending the individual's security clearance. In other DOE security clearance proceedings, Hearing Officers have consistently found that a diagnosis related to excessive alcohol use raises important security concerns. See, e.g., Personnel Security Hearing, Case No. TSO-0168, 29 DOE ¶ 82,807 (2005); Personnel Security Hearing, Case No. VSO-0079, 25 DOE ¶ 82,803 (1996) (affirmed by OSA, 1996); Personnel Security Hearing, Case No. VSO-0042, 25 DOE ¶ 82,771 (1995) (affirmed by OSA, 1996); Personnel Security Hearing, Case No. VSO-0014, 25 DOE ¶ 82,755 (1995), *aff'd*, Personnel Security Review, 25 DOE ¶ 83,002 (OSA, 1995). In these cases, it was recognized that the excessive use of alcohol might impair an individual's judgment and

^{2/} The DOE Psychiatrist's determination that the individual met criterion 7 was based upon information provided by the individual that he continued to drink despite concerns expressed by his dermatologist that his use of alcohol was inhibiting his treatment for Rosacea, a chronic recurrent physical condition. DOE Exh. 10 at 14. In addition, the individual's drinking was in contravention of warnings he received that he should not consume alcohol in combination with the antidepressant medication he takes. *Id.*

^{3/} I note, however, that individual's EAP counselor diagnosed the individual with Alcohol Abuse, based upon her evaluation conducted on March 30, 2005. See Ind. Exh. 4.

reliability, and his ability to control impulses. These factors amplify the risk that the individual will fail to safeguard classified matter or special nuclear material. *Id.* Accordingly, I will turn to whether the individual has presented sufficient evidence of rehabilitation or reformation to mitigate the concerns of DOE Security.

B. Mitigating Evidence

The individual has proactively taken steps to address his drinking problems since his DWI arrest. The individual immediately began abstinence and sought counseling with his EAP counselor on his own volition. Tr. 92. The EAP counselor initially met with the individual on March 30, 2005, and designed a program of treatment for the individual that included the following elements: (1) complete a five-week IOP program, (2) enroll in an aftercare program following completion of the IOP, (3) submit records to verify his attendance at a minimum of two AA sessions per week, and obtain an AA sponsor, (4) attend counseling sessions with the Counselor, and (5) remain abstinent from all alcohol or other mood altering drugs. See DOE Exh. 12; Ind. Exh. 4. The individual's plant psychologist reviewed the individual's EAP records and testified that the individual had either successfully completed or was continuing to fulfill all aspects of his treatment program. Tr. at 12-13.^{4/} This testimony was corroborated by the testimony of the individual's AA sponsor, close friends and Counselor. See Tr. at 21-23, 38, 48-49, 68, 126-28.

At the hearing, I found the individual sincere and forthright in expressing his resolve to continue in AA and maintain his sobriety. Tr. at 108-110. The individual's friend, who has attended aftercare and AA meetings with the individual, testified that the individual has assumed a leadership role at his aftercare sessions where he encourages new attendees, and at his AA meetings where he regularly leads the meeting. Tr. at 49-50, 54-55. The individual acknowledged his leadership role, and further testified that he has also organized and leads a (AA) Big Book Awakening group that meets on Tuesday nights. Tr. at 108, 115. The individual stated that he enjoys serving as an AA leader and may be willing to serve as an AA sponsor in the future. Tr. at 114-15.

^{4/} The IOP is a group therapy and alcohol education program that meets for four hours, four nights a week (Monday through Thursday) over a five-week period. Tr. at 44-45. The individual began his IOP program on April 18, 2005, and successfully completed the program on May 19, 2005. See DOE Exh. 12. Thereafter, he began and has continued to attend AA and weekly aftercare. The individual attends AA meetings on Monday, Wednesday and occasionally on Sunday, and meets with his aftercare group on Thursday. Tr. at 46-48, 94-95. The individual began sessions with his Counselor in June 2005, first meeting with him every two weeks, but later on a monthly basis. Tr. at 103, 106, 133. The Counselor's report to the DOE Psychiatrist, dated January 5, 2006, states that the individual "has met and/or exceeded all requirements" of his treatment program. DOE Exh. 11.

Finally, the individual's supervisor, plant psychologist, co-workers and friends were uniformly impressed with the individual's attitude and commitment to maintaining his sobriety. See Tr. at 13-14, 23, 26, 33, 55. The Counselor testified that "[the individual] is kind of an unusual case, something that has been very enlightening and heartening to me as a counselor . . . [the individual], in my opinion, has truly embraced AA and has embraced the program, rather than just a rote routine." Tr. at 126. The individual testified that he now participates in a bowling league and a model airplane club, and has made a new circle of friends. Tr. at 94-95, 98-99. The individual further testified: "I feel better about myself. I'm sleeping better. I have a better outlook on things." Tr. at 102.

The DOE Psychiatrist testified last at the hearing, after considering the evidence and testimony presented by the individual and his witnesses. In her report, issued in January 2006, the DOE Psychiatrist recommended as adequate evidence of rehabilitation that the individual maintain his abstinence from alcohol, and complete six months of additional treatment (aftercare and AA) and individual counseling, from the date of her report. See DOE Exh. 10 at 16-17. At the time of hearing, the individual had achieved eight months of additional treatment and counseling. Thus, when asked by the DOE Counsel whether the individual had, in her opinion, shown adequate evidence of rehabilitation, the DOE Psychiatrist stated: "Yes I do. As far as the rehabilitation, I think [the individual] has shown commitment and compliance to whatever the treatment recommendations were, So I think, as far as the rehabilitation, that the treatment at this point has been – I will consider that adequate." Tr. at 139. The DOE Psychiatrist later added: "I think the fact that he maintains counseling, commitment and compliance to the treatment program, which by the way are the three Cs now that they are trying to promote in treatment that you look for, is going to be a good prognosis for maintaining recovery. [The individual] has all of the elements." Tr. at 145.

In view of the evidence presented and the opinion of the DOE Psychiatrist, I find that the individual has overcome the concerns of DOE Security stemming from his DWI arrest and the DOE Psychiatrist's diagnosis of Alcohol Dependence.

III. Conclusion

I find that DOE Security properly invoked 10 C.F.R. §§ 710.8(h) and (j) in suspending the individual's request for an access authorization. However, for the reasons set forth in this Decision, I have determined that the individual has adequately mitigated the associated security concerns. I therefore find that restoring the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's security clearance should be restored. The Manager of the DOE Operations Office or the Office

of Security may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Fred L. Brown
Hearing Officer
Office of Hearings and Appeals

Date: November 20, 2006